

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1578 be amended to read as follows:

- 1 Page 8, between lines 40 and 41, begin a new paragraph and insert:
- 2 "SECTION 14. IC 6-6-5.5-8.5 IS ADDED TO THE INDIANA
- 3 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2001]: **Sec. 8.5. (a) The owner of a vehicle for**
- 5 **which the commercial vehicle excise tax has been paid for the**
- 6 **registrant's annual registration year is entitled to a credit if during**
- 7 **that registration year:**
- 8 (1) the owner sells the vehicle and purchases a new vehicle of
- 9 the same or greater weight;
- 10 (2) the vehicle is destroyed and replaced with a vehicle of the
- 11 same or greater weight; or
- 12 (3) the vehicle was registered in error at a greater weight than
- 13 required.
- 14 (b) Except as provided in subsection (c), the amount of the credit
- 15 is equal to the remainder of:
- 16 (1) the commercial vehicle excise tax paid for the vehicle,
- 17 reduced by;
- 18 (2) one-twelfth (1/12) for each full or partial calendar month
- 19 that has elapsed in the registrant's annual registration year
- 20 before the date of the sale or replacement of the vehicle.
- 21 The credit applies to the tax due on any other vehicle purchased or
- 22 subsequently registered by the owner in the same registrant's
- 23 annual registration year.
- 24 (c) The owner of a vehicle registered in error at a greater weight

1 than required is entitled to receive a credit equal to the commercial
 2 vehicle excise tax paid for the vehicle registered at the greater
 3 weight. However, no refund may be provided for any remainder of
 4 the tax paid when registering the vehicle at a lower weight.

5 (d) The owner of a vehicle is not entitled to a refund of any part
 6 of a credit that is not used under this section.

7 (e) A credit expires at the end of the registrant's annual
 8 registration year.

9 (f) To claim the credit authorized in subsection (a)(1), the owner
 10 of the vehicle must present to the bureau proof of the sale of the
 11 vehicle.

12 (g) To claim the credit authorized in subsection (a)(2), the owner
 13 of the vehicle must present to the bureau a statement of proof of
 14 the destruction of the vehicle on an affidavit furnished by the
 15 bureau. The owner must also present a valid registration for the
 16 vehicle within ninety (90) days after the date that it was destroyed.
 17 For purposes of this subsection, a vehicle is considered destroyed
 18 if the estimated cost of repair exceeds the vehicle's fair market
 19 value. After receipt of the statement and registration, the bureau
 20 shall fix the amount of the credit that the owner is entitled to
 21 receive.

22 (h) To claim the credit authorized under subsection (a)(3), the
 23 owner of the vehicle must present to the bureau on an affidavit
 24 furnished by the bureau evidence acceptable to the bureau that the
 25 vehicle was registered in error at a greater weight than required."

26 Page 10, between lines 13 and 14, begin a new paragraph and insert:

27 "SECTION 16. IC 6-8.1-8-2 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) Except as
 29 provided in IC 6-8.1-5-3, the department must issue a demand notice
 30 for the payment of a tax and any interest or penalties accrued on the
 31 tax, if a person files a tax return without including full payment of the
 32 tax or if the department, after ruling on a protest, finds that a person
 33 owes the tax before the department issues a tax warrant. The demand
 34 notice must state the following:

35 (1) That the person has ten (10) days from the date the department
 36 mails the notice to either pay the amount demanded or show
 37 reasonable cause for not paying the amount demanded.

38 (2) The statutory authority of the department for the issuance of
 39 a tax warrant.

40 (3) The earliest date on which a tax warrant may be filed and
 41 recorded.

42 (4) The remedies available to the taxpayer to prevent the filing
 43 and recording of the ~~lien~~ judgment.

44 If the department files a tax warrant in more than one (1) county, the
 45 department is not required to issue more than one (1) demand notice.

46 (b) If the person does not pay the amount demanded or show
 47 reasonable cause for not paying the amount demanded within the ten

(10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10%) of the unpaid tax is added to the total amount due.

(c) When the department issues a tax warrant, it may not file the warrant with the circuit court clerk of any county in which the person owns property until at least twenty (20) days after the date the demand notice was mailed to the taxpayer. The department may also send the warrant to the sheriff of any county in which the person owns property and direct the sheriff to file the warrant with the circuit court clerk:

- (1) at least twenty (20) days after the date the demand notice was mailed to the taxpayer; and
- (2) no later than five (5) days after the date the department issues the warrant.

(d) When the circuit court clerk receives a tax warrant from the department or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record, listing the following:

- (1) The name of the person owing the tax.
- (2) The amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable.
- (3) The date the warrant was filed with the clerk.

(e) When the entry is made, the total amount of the tax warrant becomes a judgment ~~lien~~ against the person owing the tax. The judgment **creates a lien for taxes in favor of the state that** attaches to all the person's interest in any:

- (1) chose in action in the county; and
- (2) real or personal property in the county;

excepting only negotiable instruments not yet due.

(f) A judgment ~~lien~~ obtained under this section is valid for ten (10) years from the date the ~~lien judgment~~ is filed. The department may renew ~~a lien the judgment~~ for additional ten (10) year periods by filing an alias tax warrant with the circuit court clerk of the county in which the ~~lien judgment~~ previously existed.

(g) A judgment ~~lien arising from a tax warrant~~ in a county may be released by:

- (1) the department or by the county sheriff after the ~~lien judgment~~, including all accrued interest to the date of payment, has been fully satisfied; or
- (2) the department if the department determines that the tax assessment or the issuance of the tax warrant was in error.

(h) If the department determines that the filing of a tax warrant was in error, the department shall mail a release of the judgment ~~lien~~ to the taxpayer and the circuit court clerk of each county where the warrant

was filed. The department shall mail the release as soon as possible but no later than seven (7) days after:

(1) the determination by the department that the filing of the warrant was in error; and

(2) the receipt of information by the department that the ~~lien~~ **judgment** has been recorded under subsection (d).

(i) If the department determines that a judgment ~~lien~~ described in subsection (h) is obstructing a lawful transaction, the department shall mail a release of the ~~lien~~ **judgment** to the taxpayer and the circuit court clerk of each county where the ~~lien~~ **judgment** was filed immediately upon making the determination.

(j) A release issued under subsection (h) or (i) must state that the filing of the tax warrant was in error. Upon the request of the taxpayer, the department shall mail a copy of a release issued under subsection (h) or (i) to each major credit reporting company located in each county where the ~~lien~~ **judgment** was filed.

(k) The commissioner shall notify each state agency or officer supplied with a tax warrant list of the issuance of a release under subsection (h) or (i).

(l) If the sheriff collects the full amount of a tax warrant, the sheriff shall disburse the money collected in the manner provided in section 3(c) of this chapter and then release the ~~lien~~ **judgment**. If a ~~lien~~ **judgment** has been partially or fully satisfied by a person's surety, the surety becomes subrogated to the department's rights under the ~~lien~~ **judgment** and the sheriff may not release the ~~lien~~ **judgment** until the surety's rights under the ~~lien~~ **judgment** have been satisfied by the person. If a sheriff releases a judgment: ~~lien~~

(1) before the ~~lien~~ **judgment** is fully satisfied;

(2) before the sheriff has properly disbursed the amount collected;
or

(3) after the sheriff has returned the tax warrant to the department; the sheriff commits a Class B misdemeanor and is personally liable for the part of the ~~lien~~ **judgment** not remitted to the department.

SECTION 17. IC 6-8.1-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) The county sheriff of a county shall attempt to levy on and collect a judgment ~~lien~~ **on arising from** a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment lien is entered, unless the sheriff is relieved of that duty at an earlier time by the department. The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason the sheriff's authority to collect that tax warrant ceases. During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment lien plus the accrued interest to the date of the payment. Subject to

subsubsection (b), the sheriff shall make the collection by garnisheeing the person's wages and by levying on and selling any interest in property or rights in any chose in action that the person has in the county. The Indiana laws which provide relief for debtors by exempting certain property from levy by creditors do not apply to levy and sale proceedings for ~~tax warrant judgment liens~~. **judgments arising from tax warrants.**

(b) A sheriff shall sell property to satisfy a tax warrant in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale. A sheriff may engage an auctioneer to advertise a sale and to conduct a public auction, unless the person being levied files an objection with the clerk of the circuit or superior court having the tax warrant within five (5) days of the day that the sheriff informs the person of the person's right to object. The advertising conducted by the auctioneer is in addition to any other notice required by law, and shall include a detailed description of the property to be sold. When an auctioneer is engaged under this subsection and the auctioneer files a verified claim with the clerk of the circuit or superior court with whom the tax warrant is filed, the sheriff may pay the reasonable fee and reasonable expenses of the auctioneer from the gross proceeds of the sale before other expenses and ~~liens the judgment arising from the tax warrant~~ are paid. As used in this section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

(c) The sheriff shall deposit all amounts that the sheriff collects under this section, including partial payments, into a special trust account for ~~tax warrant judgment lien collections~~. **judgments collected that arose from tax warrants.** On or before the fifth day of each month the sheriff shall disburse the money in the tax warrant judgment lien trust account in the following order:

- (1) The sheriff shall pay the department the part of the collections that represents taxes, interest, and penalties.
- (2) The sheriff shall pay the county treasurer and the clerk of the circuit or superior court the part of the collections that represents their assessed costs.
- (3) Except as provided in subdivision (4), the sheriff shall keep the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.
- (4) If the sheriff has entered a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

The department shall establish the procedure for the disbursement of partial payments so that the intent of this section is carried out.

(d) After the period described in subsection (a) has passed, the sheriff shall return the tax warrant to the department. However, if at the

end of this period the sheriff is in the process of collecting the ~~lien~~ **judgment arising from a tax warrant** in periodic payments of sufficient size that the ~~lien judgment~~ will be fully paid within one (1) year after the date the ~~lien judgment~~ was filed, the sheriff may keep the tax warrant and continue collections. When the tax warrant is returned, the department may exercise its collection powers alone, or it may allow the sheriff to continue collections in conjunction with the department. If the department and the sheriff engage in simultaneous collection efforts, the sheriff may retain for disbursement under subsection (c) only the part of the ten percent (10%) collection fee that is applicable to the part of the collections for which the sheriff is responsible. The department shall retain the rest of the collection fee.

(e) Notwithstanding any other provision of this chapter, the department may order a sheriff to return a tax warrant at any time, if the department feels that action is necessary to protect the interests of the state.

(f) This subsection applies only to the sheriff of a county having a consolidated city or a second class city. In such a county, the ten percent (10%) collection fee added under section 2(b) of this chapter shall be divided as follows:

(1) The sheriff may retain for disbursement under subsection (c) forty thousand dollars (\$40,000), plus one-fifth (1/5) of any fees exceeding that forty thousand dollar (\$40,000) amount.

(2) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the sheriff's department's pension trust fund.

(3) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the county general fund.

SECTION 18. IC 6-8.1-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) When the department collects a ~~lien judgment arising from a tax warrant~~, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

(1) an unsatisfied warrant has been issued by the department; or

(2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

SECTION 19. IC 6-8.1-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. At any time after a ~~tax warrant~~ judgment ~~lien~~ **arising from a tax warrant** has been recorded, the department may obtain a court order restraining the person owing the tax from conducting business in Indiana. The restraining order is valid as long as the judgment ~~lien~~ remains in effect, but the department may have the order dissolved if it feels that by dissolving the order the ~~lien~~ **judgment** will be easier to collect.

SECTION 20. IC 6-8.1-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. After a tax warrant becomes a judgment ~~lien~~ under section 2 of this chapter or a tax warrant is returned uncollected to the department under section 3 of this chapter, the department may take any of the following actions without judicial proceedings:

(1) The department may levy upon the property of the taxpayer that is held by a financial institution by sending a claim to the financial institution. Upon receipt of a claim under this subdivision, the financial institution shall surrender to the department the taxpayer's property. If the taxpayer's property exceeds the amount owed to the state by the taxpayer, the financial institution shall surrender the taxpayer's property in an amount equal to the amount owed. After receiving the department's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the taxpayer has on deposit or subsequently deposits, in an amount not to exceed the amount owed.

(2) The department may garnish the accrued earnings and wages of a taxpayer by sending a notice to the taxpayer's employer. Upon receipt of a notice under this subdivision, an employer shall garnish the accrued earnings and wages of the taxpayer in an amount equal to the full amount that is subject to garnishment under IC 24-4.5-5. The amount garnished shall be remitted to the department. The employer is entitled to a fee in an amount equal to the fee allowed under IC 24-4.5-5-105(5). However, the fee shall be borne entirely by the taxpayer.

(3) The department may levy upon and sell property and may:

- (A) take immediate possession of the property and store it in a secure place; or
- (B) leave the property in the custody of the taxpayer; until the day of the sale. The department shall provide notice of the sale in one (1) newspaper, as provided in IC 5-3-1-2. If the property is left in the custody of the taxpayer, the department may

require the taxpayer to provide a joint and several delivery bond, in an amount and with a surety acceptable to the department. At any time before the sale, any owner or part owner of the property may redeem the property from the judgment by paying the department the amount of the judgment. The proceeds of the sale shall be applied first to the collection expenses and second to the payment of the delinquent taxes and penalties. Any balance remaining shall be paid to the taxpayer.

SECTION 21. IC 6-8.1-8-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 8.5. (a) For purposes of this chapter, a judgment arising from a tax warrant is enforceable in the same manner as any judgment issued by a court of general jurisdiction.**

(b) The department may initiate proceedings supplementary to execution in any court of general jurisdiction in a county in which a judgment arising from a tax warrant has been recorded.

(c) Proceedings supplementary to execution on a judgment arising from a tax warrant must be initiated and maintained under the applicable rules of the selected court and under the provisions of IC 34-55-8 that do not conflict with this chapter.

SECTION 22. IC 8-2.1-23-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. The treasurer of state shall deposit fees collected under this article, **IC 9-20-18-14.5, and IC 9-29-6-5.5** in the motor carrier regulation fund.

SECTION 23. IC 9-13-2-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 6.5. "Automated vehicle identifier" means an electronic tracking device approved by the commissioner of the department of state revenue for use in connection with special weight permits for extra heavy duty highways under IC 9-20-5.**

SECTION 24. IC 9-20-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. **The owner or operator of a vehicle or combination of vehicles having a total gross weight in excess of eighty thousand (80,000) pounds but less than one hundred thirty-four thousand (134,000) pounds must:**

- (1) obtain a special weight registration permit;**
- (2) register annually and pay annually a registration fee to the department of state revenue; and**
- (3) install an approved automated vehicle identifier in each vehicle operating with a special weight permit;**

to travel on an extra heavy duty highway.

SECTION 25. IC 9-20-18-14.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 14.5. (a) The civil penalties imposed under this section are in addition to the other civil**

penalties that may be imposed under IC 8 and IC 9.

(b) A person who violates IC 9-20-5-7 is subject to a civil penalty of five hundred dollars (\$500) for each violation as determined by the court. Notwithstanding section 12 of this chapter, a civil penalty imposed under this section must be deposited in the motor carrier regulation fund established under IC 8-2.1-23.

(c) A person who operates a vehicle subject to IC 9-20-5-7 on a route other than a route designated under IC 9-20-5-4 is subject to a civil penalty of five hundred dollars (\$500) for each violation as determined by the court. Notwithstanding section 12 of this chapter, a civil penalty imposed under this section must be deposited in the motor carrier regulation fund established under IC 8-2.1-23."

Page 11, between lines 41 and 42, begin a new paragraph and insert:"

SECTION 18. IC 9-29-6-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1.5. (a) The fee for the annual registration required under IC 9-20-5-7 is twenty-five dollars (\$25). The fee imposed under this section must be deposited in the motor carrier regulation fund established under IC 8-2.1-23.

(b) The department of state revenue may impose a separate annual fee in an amount that may not exceed one dollar (\$1) on each vehicle registered under IC 9-20-5-7 for the use and maintenance of an automated vehicle identifier. The fee imposed under this subsection is in addition to the permit fee required under section 1 of this chapter. The fee imposed under this section must be deposited in the motor carrier regulation fund established under IC 8-2.1-23.

SECTION 19. [EFFECTIVE JULY 1, 2001] IC 6-8.1-8, as amended by this act, applies to all tax collection proceedings that are commenced by the department of state revenue after June 30, 2001, regardless of the date of recording a tax warrant as a judgment under IC-6-8.1-2, as amended by this act."

Renumber all SECTIONS consecutively.

(Reference is to HB 1578 as printed February 20, 2001.)

Representative Cochran